



POLICE DEPARTMENT

March 2, 2020

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Michael Pyzikiewicz :

Tax Registry No. 946615 :

114 Precinct :

Case No.

2017-18301

-----X  
At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Michael Martinez, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

1. Said Police Officer Michael Pyzikiewicz, while assigned to Highway District #3, while on-duty, on May 7, 2017, in Queens County, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer failed to remain at the scene after being involved in a motor vehicle accident while operating a Department vehicle.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-  
GENERAL REGULATIONS

2. Said Police Officer Michael Pyzikiewicz, while assigned to Highway District #3, while on-duty, on May 7, 2017, in Queens County, did fail and neglect to prepare a report of a motor vehicle accident after striking another vehicle while operating a Department vehicle.

P.G. 217-06, Page 1, Paragraph 4

DEPARTMENT VEHICLE COLLISIONS

3. Said Police Officer Michael Pyzikiewicz, while assigned to Highway District #3, while on duty, on January 25, 2018, in Queens County, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer made inaccurate statements during his Department interview by indicating he was unaware he was involved in a vehicle accident.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-  
GENERAL REGULATIONS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 22, 2020.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The

Department called Sergeant Natalie Barnes as a witness. Respondent testified on his own behalf.

A stenographic transcript of the trial record has been prepared and is available for the Police

Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent

Not Guilty.

## ANALYSIS

The facts in this case are largely uncontested. On May 7, 2017, Respondent was assigned to highway patrol to cover the area of the Long Island and Clearview Expressways. During his tour of duty, which ran from 1400 to 2235 hours, he received a radio call that an emotionally disturbed person (EDP) was walking on the Clearview Expressway. Respondent activated the lights and sirens and the "rumbler" on his vehicle and proceeded to drive at high speeds towards the scene, which was about ten minutes away. Police Officer Jacob Danisewicz also proceeded to the scene, driving directly behind Respondent. Officer Danisewicz had a dash camera activated in his vehicle.

During the high speed drive, Respondent used a "lane splitting" technique in which he drove along the line separating lanes so that his vehicle was between cars in lanes on either side of his vehicle. While lane splitting on the Grand Central Parkway, Respondent passed a minivan driven by Person A. Respondent's vehicle's passenger side was next to Person A's vehicle's driver's side. As Respondent passed Person A's vehicle, the cover of the driver's side mirror on Person A's car came off and fell to the highway.

Respondent proceeded to the incident scene. When he arrived, there were several police units and a Fire Department unit already present. Respondent exited his vehicle and walked to the passenger side. He looked in a downward direction, then turned and raised his arms up and appeared to say something while heading back towards the rear of his vehicle.

Person A who was a TLC operator and was transporting passengers at the time, called 911 and reported that her vehicle had been struck by an NYPD vehicle on the Grand Central Parkway near the Jackie Robinson Parkway and that her mirror had been damaged.

At issue here is whether Respondent's failure to remain at the scene after the accident and prepare a required accident report constituted actionable misconduct. To that end, the question of whether Respondent was actually aware that he had struck Person A's vehicle is central to resolution of this case.

Sergeant Natalie Barnes of the Queens North Investigations Unit testified that she reviewed the IAB log and the accident report and spoke to Person A in order to identify the officer who struck her vehicle. Person A told her that two NYPD vehicles were "swerving in and out of traffic, at which point she was struck by one of them," causing her driver's side mirror to be removed. She tried to record a video or photograph the vehicles, but only managed to take blurry photographs before the vehicles drove away. (Tr. 16-23) Barnes used the DOS Light database to track which RMPs were in the area at the time of the incident and checked the roll call, car assignments and activity logs, eventually determining that Respondent and Officer Danisewicz were the officers at the scene. (Tr. 24-28)

Barnes initially conducted individual interviews of Respondent and Danisewicz on October 26, 2017, in which she questioned them as potential witnesses to the accident. She asked Respondent whether he was aware that he was involved in a vehicle accident; he said that he was not aware. She asked whether, at any time, he "might have hit anything on the highway" and Respondent answered, "No." Danisewicz provided the same answers, but also volunteered that he had the "dash cam" footage, which he retrieved and brought to Barnes the day after his interview. The camera footage showed Person A's mirror "rolling down the highway" after Respondent's vehicle passed Person A's vehicle. (Tr. 29-33)

Barnes further testified that, in her observation of the video, Respondent can be seen exiting his vehicle and going directly to the front passenger side of the vehicle where he kneels

and looks at something, throws his hands in the air, and "mouths something in regards to 'shit.'" When shown the video during his second interview on January 25, 2018, Respondent told Barnes that he was "inspecting the vehicle." Barnes stated that in her experience, it would be unusual for an officer to inspect his vehicle before dealing with an emotionally disturbed person, who would ordinarily be the priority. Respondent's decision to look at "the precise location...which would have been consistent with where he had struck the complainant's vehicle," led Barnes to conclude that Respondent was aware of the accident. (Tr. 40, 43-44, 85) She testified that Respondent did not take responsibility for the accident, even after being shown the video during the interview. (Tr. 47-48)

On cross-examination, Barnes acknowledged that she initially told Respondent during his first interview that she was investigating an accident involving an SUV, and that Respondent told her that his RMP was a Ford Taurus. Additionally, she confirmed that Danisewicz did not recall the accident and never reported any misconduct at the time. (Tr. 52-56) Barnes also clarified that it was the casing around the mirror, rather than the mirror itself, which fell from Person A's vehicle. (Tr. 64) Finally, she acknowledged that there were no records of any damage to Respondent's RMP and that on May 11, 2017, the RMP received only routine maintenance for incidental damage, such as scratches, rather than for anything connected to the subject incident. (Tr. 79-82)

Respondent testified that on May 7, 2017, while on highway patrol, he received a call about an EDP walking by the highway, which was considered a "highest priority" job as it could result in a person's death. (Tr. 93-95) In order to reach the EDP as quickly as possible, he used the "lane-splitting" technique of driving between cars. He acknowledged driving close to several cars, but did not believe, at the time, that he had struck any of them. He cited the following

reasons to explain why he would not have been aware if he made contact with the mirror: the contact was very slight; the contact would have been on the far side from where he was sitting; he was looking ahead to avoid collisions while driving at a high speed; his car was filled with equipment; and his siren and rumbler were making noise at the time. He denied ever feeling any indication that he had struck another vehicle. Respondent stated that no one, including Danisewicz, told him that he had hit another car. (Tr. 96-103, 120)

When Respondent reached the scene of the EDP call, he saw several NYPD vehicles with approximately six officers present, as well as an EMS vehicle and a civilian vehicle, which he assumed was the vehicle in question. He testified that he did not have a memory of the moment in the video wherein he walks to the passenger side of his vehicle, looks down and raises his hands. He believed that, based on his experience working highway patrol, the moment where he looked down in the video was likely an effort to check for a flat tire due to driving on the shoulder, where there is often debris. He estimated that he had 20 flat tires in his five years of highway patrol. (Tr. 104-106, 110-111) He denied that he was looking at the RMP's mirror in the video, based on where he placed his hand on the car and how he bent forward, offering that he was looking towards the tire instead. He could not recall why he made the gesture with his hands. (Tr. 114-115)

The video of the incident recorded with Danisewicz's "dash cam" was entered into evidence as Department's Exhibit I. The video shows Respondent's RMP weaving between cars and, at the 02:15 mark, he drives closely by a black van to his right. A black object falls from the van onto the road and Danisewicz's vehicle appears to drive right over the object. At the 09:10 mark, Respondent and Danisewicz pull onto the shoulder, which consists of cobblestone and dirt. From approximately 09:30 to 09:42, Respondent exits his RMP, walks around the back

towards the front passenger side window, looks down, turns around and briefly puts his hands in the air.

Department's Exhibit 2 consists of Respondent's two official interviews. In the first interview on October 26, 2017, Respondent stated multiple times that he did not remember the incident, or even whether he was responding to an emergency at the time. He was asked about an accident where a Department SUV broke a civilian's vehicle's side mirror, and, in response, pointed out that his RMP was not an SUV. He denied noticing any damage to the vehicle after his tour on May 7, 2017. (Dep't Ex. 2, dated 10/26/17, at 5-9) During the second interview, on January 25, 2018, Respondent stated that he still did not recall the incident, despite having viewed the "dash cam" video depicting damage to Person A's vehicle and his own looking at the RMP. He acknowledged that he would not ordinarily pause to inspect his vehicle before dealing with an emergency situation. (Dep't Ex. 2, dated 1/26/18, at 4-7)

*Specifications 1 and 2- Failure to Remain at Scene and Prepare Accident Report*

Specifications 1 and 2 charge Respondent with failing to remain at the scene of the accident and failing to prepare an accident report, respectively. These two specifications are predicated on Respondent's failure to take certain actions regarding an accident that he maintains he did not realize had happened.

In order to sustain a charge of misconduct, an agency must prove some showing of fault on the employee's part, generally that respondent intentionally violated a procedural rule or was careless in his duties in some respect. *See Dep't of Envtl. Prot. v. Majors*, OATH Index No. 1024/10 (March 10, 2010), *citing Dep't of Sanitation v. Rizzo*, OATH Index No. 1423/06 (September 26, 2006). In a remarkably similar case in this forum, a police officer was found Not Guilty of four specifications (failure to remain at the scene, failure to request a patrol supervisor,

failure to prepare an accident report and failure to make an Activity Log entry) when the RMP, in which she was the recorder, scraped a civilian vehicle's side mirror. The operator and civilian both told each other to drive more carefully, but this court found that at the time of the accident, neither the civilian nor the respondent's partner was aware that the accident had occurred. Consequently, the respondent herself could not be guilty of failure to take actions in response to an accident that she and those around her had no awareness of. *See Disciplinary Case No. 2014-11525* (July 27, 2015). Another instructive case, which the Department cited at trial, is *Disciplinary Case Nos. 2016-16665 & 2016-16668* (Nov. 9, 2017), which also involved damage to a civilian's side mirror. However, the key distinction between that case and the instant matter is that the respondents there were admittedly aware of the contact with the other vehicle.

Here, the Department has not met its burden of proving that Respondent was aware of the damage to Person A's mirror. I credit Respondent's testimony that he didn't hear a thump over the sound of the siren or rumbler, that he was looking ahead while driving, and that the contact took place on the opposite side of his car and would have been too slight for him to feel it. Indeed, the contact was so minor that Person A's mirror did not break, but rather its casing simply fell off. It is also significant that Danisewicz, driving directly behind Respondent with a perfect view of the incident, did not notice the mirror casing falling off. Additionally, Respondent's brief look at the front right side of his RMP and gesturing is not adequate evidence of consciousness of guilt, as there were alternative explanations given at trial such as concern that the tire might have been damaged by debris on the shoulder.

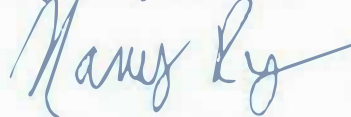
Because the Department has not proven Respondent was aware of the accident, his failure to take the required steps of remaining at the scene and preparing a report does not constitute misconduct. Accordingly, I find Respondent Not Guilty of Specifications 1 and 2.



*Specification 3- Inaccurate Statements at Department Interview*

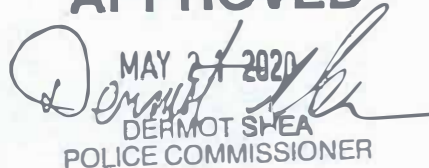
Specification 3 charges Respondent with making inaccurate statements during his Department interview on January 25, 2018. Respondent maintained throughout both of his official interviews that he did not recall anything about the incident. As stated above, Respondent's looking at the RMP and gesturing does not establish awareness of the accident. When shown the video at the interview, he admitted that he could see his RMP damaging Person A's mirror and saw himself inspecting the right side of the RMP after parking at the location. However, watching the video several months after the incident and actually recalling the accident are two different things. The Department has not established that Respondent actually recalled the accident and, therefore, has not proven that he was making an inaccurate statement during the interview when he stated that he did not have any recollection of the accident. Accordingly, I find Respondent Not Guilty of Specification 3.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**



MAY 21 2020  
DERMOT SHEA  
POLICE COMMISSIONER